

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

LARRY VICTOR KNOX,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

NO: 2:20-CV-0373-TOR

ORDER SUMMARILY DISMISSING  
HABEAS PETITION

Petitioner, a prisoner at the Coyote Ridge Corrections Center, brings this *pro se* Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254. The \$5.00 filing fee has been paid.

**PROPER RESPONDENT**

An initial defect with the Petition is that it fails to name a proper party as a respondent. The proper respondent in a federal petition seeking habeas corpus relief is the person having custody of the petitioner. *Rumsfeld v. Padilla*, 542 U.S. 426 (2004); *Stanley v. Cal. Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994). If the

1 petitioner is incarcerated, the proper respondent is generally the warden of the  
2 institution where the petitioner is incarcerated. *See Ortiz-Sandoval v. Gomez*, 81 F.3d  
3 891 (9th Cir. 1996). Failure to name a proper respondent deprives federal courts of  
4 personal jurisdiction. *See Stanley*, 21 F.3d at 360.

### 5 EXHAUSTION REQUIREMENT

6 Petitioner challenges a 1999 Spokane County conviction child rape. He was  
7 sentenced to life without parole. He indicates that his conviction and sentence were  
8 affirmed on direct appeal in 2001. ECF No. 1 at 3. He did not seek review in the  
9 Washington State Supreme Court. *Id.*

10 In his grounds for relief, Petitioner argues that the State of Washington has no  
11 jurisdiction to decide federal constitutional matters. ECF No. 1 at 6-13. It has long  
12 been settled that state courts are competent to decide questions arising under the U.S.  
13 Constitution. *See Baker v. Grice*, 169 U.S. 284, 291 (1898) (“It is the duty of the  
14 state court, as much as it is that of the federal courts, when the question of the validity  
15 of a state statute is necessarily involved, as being in alleged violation of any  
16 provision of the federal constitution, to decide that question, and to hold the law void  
17 if it violate that instrument.”); *see also Worldwide Church of God v. McNair*, 805  
18 F.2d 888, 891 (9th Cir. 1986) (holding that state courts are as competent as federal  
19 courts to decide federal constitutional matters). Therefore, Petitioner’s arguments  
20 to the contrary lack merit.

1        Additionally, before a federal court may grant habeas relief to a state prisoner,  
2 the prisoner must exhaust the state court remedies available to him. 28 U.S.C.  
3 § 2254(b); *Baldwin v. Reese*, 541 U.S. 27 (2004). Exhaustion generally requires that  
4 a prisoner give the state courts an opportunity to act on his claims before he presents  
5 those claims to a federal court. *O’Sullivan v. Boerckel*, 526 U.S. 838 (1999). A  
6 petitioner has not exhausted a claim for relief so long as the petitioner has a right  
7 under state law to raise the claim by available procedure. *See id.*; 28 U.S.C.  
8 § 2254(c).

9        To meet the exhaustion requirement, the petitioner must have “fairly  
10 present[ed]’ his claim in each appropriate state court (including a state supreme court  
11 with powers of discretionary review), thereby alerting that court to the federal nature  
12 of the claim.” *Baldwin*, 541 U.S. at 29; *see also Duncan v. Henry*, 513 U.S. 364,  
13 365–66 (1995). A petitioner fairly presents a claim to the state court by describing  
14 the factual or legal bases for that claim and by alerting the state court “to the fact  
15 that the ... [petitioner is] asserting claims under the United States Constitution.”  
16 *Duncan*, 513 U.S. at 365–366; *see also Tamalini v. Stewart*, 249 F.3d 895, 898 (9th  
17 Cir. 2001) (same). Mere similarity between a claim raised in state court and a claim  
18 in a federal habeas petition is insufficient. *Duncan*, 513 U.S. at 365–366.

19        Furthermore, to fairly present a claim, the petitioner “must give the state  
20 courts one full opportunity to resolve any constitutional issues by invoking one

1 complete round of the State's established appellate review process." *O'Sullivan*,  
2 526 U.S. at 845. Once a federal claim has been fairly presented to the state courts,  
3 the exhaustion requirement is satisfied. *See Picard v. Connor*, 404 U.S. 270, 275  
4 (1971). Petitioner affirmatively represents that he did not fully exhaust his state  
5 court remedies. ECF No. 1 at 3.

### 6 **GROUND FOR FEDERAL HABEAS RELIEF**

7 Petitioner asserts that the Washington state constitution contradicts the federal  
8 constitution regarding the Fifth Amendment right to "presentment or indictment of  
9 a Grand Jury." He claims "no bill of indictment" was brought against him rendering  
10 his arrest, conviction and imprisonment illegal.

11 Petitioner seems to argue that because the state courts have defied "federally  
12 established procedures and processes for the adjudication of crimes" only "a court  
13 of federal jurisdiction" has jurisdictional authority over his claims. His bald  
14 assertion that "due process of the law was ignored" is unsupported by his factual  
15 allegations.

16 The United States Supreme Court stated long ago: "Prosecution by  
17 information instead of by indictment is provided for by the laws of Washington.  
18 This is not a violation of the Federal Constitution." *See Gaines v. State of*  
19 *Washington*, 277 U.S. 81, 86 (1928). There is no federal constitutional violation  
20 when a prosecuting attorney's criminal information is substituted for the grand jury's


1 indictment. *See Hurtado v. People of State of California*, 110 U.S. 516 (1884)  
2 (rejecting the claim that an indictment is essential to due process of law and that a  
3 state violates the Fourteenth Amendment by prosecuting a defendant with a criminal  
4 information). Consequently, Petitioner's assertions to the contrary presented in his  
5 four grounds for federal habeas relief are legally frivolous.

6 Because it plainly appears from the petition and the attached exhibits that  
7 Petitioner is not entitled to relief in this Court, **IT IS ORDERED** the petition, ECF  
8 No. 1, is **DISMISSED** pursuant to Rule 4, Rules Governing Section 2254 Cases in  
9 the United States District Courts. **IT IS FURTHER ORDERED** all pending  
10 motions are denied as moot.

11 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,  
12 enter judgment, provide copies to Petitioner, and **close** the file. The Court certifies  
13 that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be  
14 taken in good faith, and there is no basis upon which to issue a certificate of  
15 appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of  
16 appealability is therefore **DENIED**.

17 **DATED** October 28, 2020.



  
THOMAS O. RICE  
United States District Judge